

May 10, 2007

Mr. Robert P. Reeder
1302 Barksdale Road
Newark, DE 19711

**RE: Freedom of Information Act Complaint
Against Delaware State University**

Dear Mr. Reeder:

On March 12, 2007, our Office received your complaint alleging that Delaware State University ("the University") violated the public record requirements of the Freedom of Information Act, 29 *Del. C.* Ch. 100 ("FOIA").

By letter dated February 17, 2007, you asked the University for: "payroll documents of Delaware State Employees, Mr. Richard Cathcart and Ms. Nancy Wagner."

By letter dated March 5, 2007, Carlos Holmes, the University's Director of News Services, Office of Public Relations, denied your FOIA request. According to Mr. Holmes, the "University is exempted from the application of [FOIA] except with respect to records relating to expenditure of public funds . . . The records requested by you do not relate to the expenditure of public funds . . ."

By letter dated March 12, 2007, our Office asked the University to respond to your FOIA complaint in writing by March 23, 2006. Our Office received the University's response on March 23, 2007.

According to the University:

Neither Mr. Cathcart nor Ms. Wagner are compensated by the University from public funds. Within its accounting system, the University maintains a strict separation of public and non-public funds. Upon employment, every University employee is coded or "tagged" within the University's accounting software so that their compensation can be tracked to a funding source (i.e., public or non-public funding). This tracking system includes not only salary, but also all benefits and pension expenditures.

...

Mr. Cathcart and Ms. Wagner are coded within the University's accounting system such that their salary and benefits and pension payments are compensated from non-public funds. To be absolutely clear, neither Mr. Cathcart nor Ms. Wagner are compensated by the University through the use of public funds.

In order to better understand the University's accounting system, representatives of our Office (including the Department of Justice's accountant) met with the University's accounting staff on April 19, 2007. Using actual accounting records, the University's accounting staff showed us how it codes each new employee to be paid either by University funds (also known as private or "restricted" funds) or by State appropriations. The University maintains a separate bank account (at PNC Bank) for restricted funds to pay not only the employee's salary but also contributions for benefits and pension according to the State payroll formula. The University's accounting records show that both Mr. Cathcart and Ms. Wagner are coded for payroll purposes as paid by restricted funds.

RELEVANT STATUTES

FOIA requires that "[a]ll public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." 29 *Del. C.* §10003(a).

FOIA provides that "'Public body, 'public record' and 'meeting' shall not include activities of the University of Delaware and Delaware State University, except that the Board of Trustees of the University of Delaware and the Board of Trustees of [Delaware State University] shall be 'public bodies,' . . . and documents relating to the expenditure of public funds shall be 'public records,'" *Id.* §10002(d).

LEGAL ANALYSIS

"'As a general rule, FOIA requires that 'all public records shall be open for inspection and copying by citizens of the State during regular business hours by the custodian of the records for the appropriate public body.'" *Att'y Gen. Op.* 00-IB08 (May 24, 2000) (quoting 29 *Del. C.* §10003(a)). "FOIA exempts from disclosure, however, records in the custody of [Delaware State University] unless they 'relate to the expenditure of public funds.'" *Att'y Gen. Op.* 00-IB08 (quoting 29 *Del. C.* §10002(d)).

Based on the record, our Office determines that the payroll information you requested from the University regarding Mr. Cathcart and Ms. Wagner is not a public record for purposes of FOIA. The record shows that the University compensates Mr. Cathcart and Ms. Wagner for salary, benefits, and pension with non-public funds. Under FOIA, that payroll information is not a public record to

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which the public must have access because the information does not "relat[e] to the expenditure of public funds." 29 *Del. C.* §10002(d).

CONCLUSION

For the foregoing reasons, our Office determines that the University did not violate FOIA. The payroll information you requested is not a public record under FOIA because that information does not relate to the expenditure of public funds.

Very truly yours,

W. Michael Tupman, Esquire
Deputy Attorney General

APPROVED

Lawrence W. Lewis, Esquire
State Solicitor

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cc: The Honorable Joseph R. Biden, III
Attorney General

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Chief Deputy Attorney General

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